IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

**O R D E R**

Surja Ram Choudhary Vs. State of Rajasthan & Anr.

**S.B.CIVIL WRIT PETITION NO.4318/2006**

DATE OF ORDER :: May 25, 2007

**PRESENT**

**HON'BLE MR.JUSTICE H.R.PANWAR**

Mr.Harish Purohit, for the petitioner.

Mr.Rameshwar Dave, Dy.G.A. for the respondents

**BY THE COURT:**

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks a direction to the respondents to consider his case for appointment on the post of Constable in pursuance of Advertisement No.3751 dt. 14.6.2005 and Corrigendum No.8612 dt. 24.12.2005.

The facts giving rise to the instant writ petition are that the

respondents advertised the posts of Constable vide advertisement and corrigendum referred hereinabove and in pursuance thereof, the petitioner submitted an application dt. 5.7.2005, copy of which has been filed by the respondents along with additional affidavit dt. 24.4.2007. The petitioner appeared in examination as well as physical test conducted by respondent No.2 for the said post. On holding the examination and conducting the physical test of the candidates, who appeared for the post of Constable, result of examination was declared by respondent No.2 and select list has been published. The petitioner secured 6th position in the merit list in general category, though belongs to "Other Backward Class" (for short "OBC" hereinafter). However, the name of the petitioner did not appear in the select list presumably on the ground that the information furnished by the petitioner in the application, as required, was not complete. Hence, this writ petition.

I have heard learned counsel for the parties.

It is contended by the learned counsel for the petitioner that the petitioner secured 6th position in the merit list. The petitioner possesses the requisite qualification for the post of Constable as advertised by the respondents as the petitioner passed Secondary School Examination from Board of Secondary

Education, Rajasthan, Ajmer vide Annexure-1. It is submitted by the learned counsel for the petitioner that in Columns No. 17.1., 17.2 and 17.3 of the application, the petitioner has specifically mentioned that a criminal case was registered against him and a challan was filed against him. Column No.17.1 provides whether any criminal case has been registered against the applicant, the answer has been given in affirmative i.e. "Yes"; column No.17.2 provides whether any challan in a criminal case has been filed against the applicant, the answer has been given in affirmative i.e. "Yes" and; column No.17.3 provides whether the applicant has been sentenced in a criminal case, the answer has been given in negative i.e. "No." and below these columns in the space provided, expression "Udaimandir" has been mentioned.

Learned counsel for the petitioner submits that a criminal case was registered against the petitioner with the Police Station, Udaimandir for the offences under sections 323 and 341 I.P.C. and a challan was filed. The complainant injured therein compounded the offences and since the offences were compoundable, the court, in which the challan was filed, accepted compounding of the offences and acquitted the petitioner. Thus, the petitioner has not concealed any material fact in his application form. Lastly it was contended that the respondents without making proper verification of the character

and examining the petitioner's antecedents in accordance with law, simply denied consideration to the petitioner.

Learned counsel for the petitioner has relied on a decision of this Court in Rajendra Singh Bhati vs. State of Rajasthan & Ors., S.B. Civil Writ Petition No.4159/2006 decided on 5.12.2006.

A reply to the writ petition has been filed by the respondents stating therein that the petitioner failed to give full particulars in column No.17.1, 17.2 and 17.3 as the petitioner has not specifically disclosed the criminal case number, court in which the challan was filed and pending trial, therefore, he was not considered for non-disclosure of the material facts.

I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties.

From the perusal of the copy of the application submitted by the petitioner and filed by the respondents along with additional affidavit, in my view, the petitioner has rightly answered the column No.17.1 because the answer was sought in “yes” or “no”, so as the case of column No.17.2, the answer was sought in “yes” or “no” and the petitioner answered in

affirmative i.e. "yes". Thus, the petitioner has not concealed the registration of the criminal case against him as also filing of challan against him. Column No.17.3 clearly provides whether the applicant has been sentenced in any criminal case, the petitioner has answered in negative i.e. "no" and in my view rightly so. It is not the case of the respondents that the petitioner was ever convicted and sentenced in any criminal case. With regard to note below these columns, which provides that applicant is to disclose the number of the criminal case, names of the police station and court and charge or the sentence etc. Though the petitioner has stated that a case was registered against him at Udaimandir, Police Station, but particulars of the case have not been mentioned. This, by itself, cannot be said to amount concealing the material fact. Moreover, the offences as noticed above were compoundable and the complainant-injured has compounded the offences under section 320 Cr.P.C. On compounding the offences under sections 323 and 341 I.P.C., the petitioner has been acquitted long back.

This Court in Rajendra Singh Bhati vs. State of Rajasthan & Ors. (supra) observed as under:

> "In the instant matter the respondents without application of mind and merely on the count that the petitioner faced a

> criminal trial that resulted into an acquittal denied appointment by applying the law laid down by Hon'ble Supreme Court in the case of Delhi Administration (supra). I am of the considered opinion that the application of judgment referred above without getting the character verification of the petitioner and without examining his antecedents by proper application of mind, is no bearing in present matter. The respondents should have first made proper verification of the character and his antecedents and should have to make a definite opinion that character and antecedents of the petitioner are such that he is not suitable for appointment in government service."

This Court in Rajendra Singh Bhati vs. State of Rajasthan & Ors. (supra) held that the denial of the appointment to the petitioner therein is illegal and the respondents, therefore, were directed to consider the candidature of the petitioner therein for appointment as Constable in Rajasthan Police by making proper character verification and by examining his antecedents in accordance with law.

In this view of the matter, in my view, the petitioner deserves similar treatment.

Consequently, the writ petition is allowed and the respondents are directed to consider the candidature of the

petitioner for appointment as Constable in Rajasthan Police by making proper character verification and by examining his antecedents in accordance with law. There shall be no order as to costs.

**[H.R.PANWAR],J.**

m.asif/-